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Decision

Matter of: Oceaneering International, Inc.

File: B-287325

Date: June 5, 2001

Daniel J. Riley, Esq., O. Kevin Vincent, Esq., and Thomas B. Carr, Esq., Baker Botts, for the protester.

Buel White, Esq., for Phoenix International, Inc., the intervenor.

Andrew C. Saunders, Esq., Kelly Swartz, Esq., and John M. Davis, Esq., Naval Sea Systems Command, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. General Accounting Office's granting of an extension of the due date for the protester's comments on the agency report does not waive the timeliness requirements for filing a supplemental protest, and thus new and independent protest issues, first raised in comments submitted more than 10 days after receipt of the agency report on which the issues were based, are dismissed as untimely.
2. Agency reasonably evaluated the comparative degree of relevance of the past contract experience of offerors under the experience factor, and not under the past performance factor, consistent with the solicitation's evaluation scheme.
3. Agency's determination that the corporate experience of the awardee was equivalent to that of the incumbent is reasonable where the awardee performed contract work very similar to the work required under the solicitation and where the awardee's proposed key management personnel possessed significant experience.
4. Agency was not required by the solicitation to contact sources of information relating to an offeror's past performance, but has the discretion to consider only the references listed in the proposal.
5. Agency may have a reasonable basis to consider one proposal superior to another under an evaluation factor, even though both proposals are awarded the same rating for the factor.

6. Agency's evaluation of an oral presentation in response to a solicitation for an international undersea search, salvage and rescue operations contract did not use an unstated evaluation factor in considering whether offerors discussed alternative ports of mobilization where this element is intrinsic to one of the matters that was to be addressed in the oral presentation--mobilization.

7. Agency's failure to obtain or consider supporting cost data for subcontractor costs in the cost evaluation is unobjectionable, where the solicitation stipulated for evaluation purposes an amount for the cost reimbursable subcontract costs, the solicitation only required the submission of such data "as appropriate," and neither the protester nor the awardee submitted this supporting cost data.

DECISION

Oceaneering International, Inc. protests an award to Phoenix International, Inc. under request for proposals (RFP) No. N00024-R-4114, issued by the Naval Sea Systems Command (NAVSEA), for undersea operations services.

We deny the protest.

BACKGROUND

The mission of NAVSEA's Office of the Director of Ocean Engineering, Supervisor of Salvage and Diving (SUPSALV), is to provide support to the Navy and other agencies in the ocean engineering disciplines. In doing so, SUPSALV maintains contracts to supplement the Navy's salvage, search, recovery and rescue capabilities. The primary purpose of the contract contemplated by this RFP is to provide services that assist the Navy in conducting undersea search, salvage and rescue operations on a worldwide basis. Oceaneering is the incumbent contractor for these services. Phoenix is the incumbent contractor for SUPSALV's worldwide diving services contract.

The RFP, issued on September 11, 2000, contemplated the award of an indefinite-delivery/indefinite-quantity contract at fixed-price rates, with provision for some cost-reimbursement type services, for 1 year with 4 option years. Work will be ordered under the contract by delivery orders that may include fixed rate "scheduled" items as well as cost reimbursable "nonscheduled" items. The scheduled items were for various categories of personnel, for which fixed hourly rates were required to be offered, as well as for certain equipment. The nonscheduled cost reimbursable items included subcontract costs. According to the RFP, evaluated cost was to be based on an analysis of the reasonableness, realism and completeness of the offerors' responses to five scenarios included in schedule C of the RFP. For each of the scenarios, the RFP specified the hours for each scheduled item, for which the offeror was to provide their rates; for nonscheduled items, including subcontracting costs, the RFP stated dollar figures that were applicable to all offerors, and offerors were to provide only the dollar value of their

firm's burdens applicable to the stated cost figures. The RFP provided for the submission of supporting cost data for the offeror's indirect costs and subcontracted costs where appropriate.

The awardee was to be the responsible offeror whose acceptable proposal represented the best value as determined in accordance with the stated evaluation factors and subfactors. The technical evaluation factors and their relative importance were as follows: technical capability--30 percent; management approach--30 percent; experience--25 percent; and organizational past performance--15 percent. The technical capability factor had the following three equally weighted subfactors: oral presentation, resumes, and facilities. The RFP stated that the technical evaluation factors were significantly more important than evaluated cost. The RFP stated that it was intended that award would be made without discussions.

NAVSEA received proposals from Oceaneering and Phoenix. The agency rated Phoenix's proposal outstanding (*i.e.*, the highest adjectival rating) under all factors and subfactors, and rated Oceaneering's proposal outstanding under all factors and subfactors, with the exception of a good rating (*i.e.*, the second highest rating) under the resumes subfactor of the technical capability factor. Phoenix's proposal had the lowest evaluated cost of \$27,442,727. Oceaneering's evaluated cost was \$28,255,921. NAVSEA selected Phoenix's proposal for award. The source selection decision stated the following:

4. Although the SSET concluded that both offers were outstanding in technical capability, it determined the Phoenix proposal was stronger overall in the technical capability factor. In the resumes subfactor, Phoenix's proposed Search and [Remotely Operated Vehicles (ROV)] Operation Project Managers . . . and Search Operation Assistant Project Managers . . . were better suited to conduct SUPSALV search and recovery operations.

5. Phoenix's search capability advantage was also evident in the technical (quiz) problem of the oral presentation. While Phoenix presented an excellent plan for locating the lost sonar using the Side Scan Sonar (SSS), Oceaneering assumed they could not locate the target initially with the SSS. They continued the search utilizing the [ROV] which is not normally used as [a] search tool and therefore complicated the search and recovery efforts. Phoenix's search capabilities will likely lead to increased efficiencies and ultimately, lowered SUPSALV operating costs.

6. The two offerors' facilities were also evaluated as outstanding; however, the Phoenix proposal had a significant advantage. Phoenix's water front location and pier significantly enhances full operational and maintenance testing of all [government furnished equipment]. The

waterfront location could also be used as a mobilization/demobilization site for search and recovery operations.

7. Although Phoenix's operational and maintenance experience has been relatively short[,] it was rated substantially equal to Oceaneering[s]. The five documented search and recovery operations were very similar to many SUPSALV search and recovery operations and were conducted flawlessly. Three of those tasks were in water depths in excess of 9,000 [feet of seawater]. Phoenix also participated in Operation Pacific Reach 2000 Submarine Rescue Exercise and completed three SUPSALV search and recovery operations. Successful completion of these operations demonstrated the vast operational and maintenance experience. In addition, Oceaneering has more years as a corporation, Phoenix was found to have more experience in its personnel. Based on this conclusion, both Offerors' operational and maintenance experience was considered equal. In all other ratings, Phoenix and Oceaneering were considered to be substantially equal.

8. The [Cost Analysis Panel] . . . concluded the Phoenix proposal normalized cost was approximately \$800,000 less than the Oceaneering proposal.

9. Based on the foregoing, award of the contract to Phoenix is considered to be in accordance with the predetermined source selection methodology, and is moreover in the best interest of the Government. Phoenix's proposal was rated higher than Oceaneering's proposal in the technical capability factor and in all of the other evaluation factors the proposals were rated substantially equal; Phoenix's evaluated price is lower than Oceaneering's evaluated price.

Agency Report, Tab 8, Source Selection Evaluation Team (SSET) Recommendation of Award, at 2-3.¹

On February 14, 2001, NAVSEA awarded the contract to Phoenix. Following a debriefing, Oceaneering filed this protest on February 26. NAVSEA has issued a stop work order under Phoenix's contract.

¹ The SSET Recommendation for Award was prepared by the SSET for the Source Selection Authority (SSA). The SSA agreed with the recommendation and did not prepare a separate source selection decision document. Agency Report, Tab 14, Business Clearance Memorandum, at 10-11.

PROTESTS

Oceaneering's initial protest raised the following protest issues: (1) NAVSEA's technical evaluation was unfair and unreasonable because, although the agency considered the greater experience of Phoenix's proposed project management key personnel in rating Phoenix's proposal higher under the resumes subfactor of the technical capability factor, NAVSEA did not consider Oceaneering's greater organizational experience in rating the two proposals equivalent under the other factors and subfactors, Protest at 3-4, 15-17; (2) NAVSEA's evaluation under the experience and past performance factors did not properly consider the extent to which proposed personnel had worked together on the offerors' past projects, id. at 4, 17; (3) NAVSEA failed to seek past performance information, other than that provided by contract references identified in the proposal, in evaluating Phoenix's past performance, id. at 4, 17-19; (4) NAVSEA deviated from the rating system stated in the RFP, which required the agency to consider as equivalent proposals receiving the same adjectival rating, in that the agency improperly considered Phoenix's oral presentation to be better than Oceaneering's, although both offerors received the same outstanding rating, id. at 19; (5) NAVSEA evaluated oral presentation quiz responses using an unstated evaluation criterion--the extent to which offerors discussed alternative mobilization ports, id. at 4, 19-20; and (6) NAVSEA failed to conduct a proper cost realism analysis on Phoenix's "unscheduled" subcontract costs because Phoenix did not submit supporting cost data for its subcontractors, id. at 4, 20-21.

Following the submission of NAVSEA's report on the protest, Oceaneering submitted two sets of comments that raised additional protest grounds. As a result of Oceaneering's request for an extension, which we granted, Oceaneering filed its initial comments on the report with our Office on April 11, 13 days after it had received the agency report providing the bases for these additional protest grounds. These additional protest grounds were: (1) Phoenix's proposal improperly relied on the past performance of a proposed subcontractor for one of five contract references, Protester's Comments, at 7-8, 12; (2) NAVSEA's evaluation of Oceaneering's proposal under the oral presentation subfactor of the technical capability factor was unreasonable with respect to Oceaneering's presumptions regarding its use of the SSS, id. at 16-17; (3) NAVSEA failed to evaluate deficiencies in the qualifications of Phoenix's proposed technical key personnel, such that Oceaneering's key personnel should have been considered superior overall to Phoenix's key personnel, id. at 2-7; (4) Phoenix's resumes for its key personnel exceeded the page limitation stated in the RFP, Protester's Supplemental Comments (Apr. 30, 2001) at 9-10; (5) NAVSEA did not have adequate supporting cost data for Phoenix's own proposed indirect rates applicable to nonscheduled costs as required by the RFP, Protester's Comments at 19-20; (6) NAVSEA's cost evaluation improperly evaluated Phoenix's hazardous duty premium and lead electronic technician rates, id. at 20-21; and (7) NAVSEA failed to evaluate the reasonableness and realism of the costs of submarine rescue operations, id. at 23.

UNTIMELY PROTEST ISSUES

The agency asserts that the additional protest grounds were untimely filed because they arise from information in the agency report and accompanying documents received by the protester on March 29, and these additional protest grounds were not filed in our Office within 10 days of that date. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2001). Oceaneering responds that these issues were not new grounds of protest, but rather provided additional support for its initial protest challenging the propriety of NAVSEA's technical and cost evaluations.

As a general rule, the timeliness of specific bases of protest raised after the filing of a timely protest depends on the relationship the later-raised bases bear to the initial protest. Where the later-raised bases present new and independent grounds for protest, they must independently satisfy our timeliness requirements; conversely, where the later-raised bases merely provide additional support for an earlier, timely raised protest basis, we will consider the later-raised arguments. Ti Hu, Inc., B-284360, Mar. 31, 2000, 2000 CPD ¶ 62 at 4.

Here, Oceaneering's additional protest issues constitute new and independent protest grounds, rather than additional support for the initial protest grounds. For example, Oceaneering's initial challenges to the evaluation of past performance essentially concern the degree to which Oceaneering's past performance rating should have been higher than Phoenix's because Phoenix's organizational experience has been on relevant but allegedly less complex contracts than Oceaneering's, whereas in its later-raised protest ground it alleged that the agency should not have evaluated one of the contract references listed in Phoenix's proposal because it was for a subcontractor. As a second example, we note that the initial protest of the cost evaluation was that the agency did not have or evaluate cost data for Phoenix's subcontractors as required by the RFP and thus could not evaluate the cost realism of Phoenix's unscheduled subcontracting costs, whereas in its later-raised protest grounds it alleged that the agency did not have adequate information on, or did not reasonably evaluate, Phoenix's own cost data regarding its indirect rates, and that other elements of Phoenix's cost proposal (other than subcontract costs) were misevaluated. In all cases, although the initial and later-raised protest grounds have evaluation factors in common, the nature of the allegations are significantly different, so as to constitute separate and independent protest grounds that must satisfy the timeliness requirements of our Bid Protest Regulations. See id. (example of separate and independent protest grounds arising under the same evaluation factor); RAMCOR Servs. Group, Inc., A-276633.2 et al., Mar. 23, 1998, 98-1 CPD ¶ 121 at 9 n.9 (individual examples of flaws in evaluation must be alleged in a timely manner); Vinnell Corp., B-270793, B-270793.2, Apr. 24, 1996, 96-1 CPD ¶ 271 at 7 (same).

The fact that our Office granted the protester's request for an extension on filing its comments did not, and cannot, waive the timeliness requirements for filing new bid protest issues.² ATA Defense Indus., Inc., B-282511.8, May 18, 2000, 2000 CPD ¶ 81 at 4. We therefore dismiss these additional protest grounds as untimely.³

DISCUSSION

Oceaneering timely challenges various aspects of the agency's evaluation of the proposals. In considering such a protest, we will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation

² The protester requests that, for its allegation that NAVSEA failed to consider the cost resulting to the government for submarine rescue operations, we consider this protest ground under the significant issue exception to the timeliness requirements of our Bid Protest Regulations, 4 C.F.R. § 21.2(c). Protester's Supplemental Comments (Apr. 30, 2001) at 21-22. Our Office will review an untimely protest under the significant issue exception only if the matter raised is of widespread interest to the procurement community and has not been considered on the merits in a previous decision. Source Diversified, Inc., B-259034, Mar. 1, 1995, 95-1 CPD ¶ 119 at 3. Here, Oceaneering itself states that our Office has previously considered on the merits the issue of an agency's requirement to consider cost or price in its source selection. Protester's Supplemental Comments (Apr. 30, 2001) at 21 (citing S. J. Thomas Co., Inc., B-283192, Oct. 20, 1999, 99-2 CPD ¶ 73). Also, the issue is limited to a particular procurement and we do not believe that it is of widespread interest to the procurement community. See Source Diversified, Inc., *supra*, at 3-4. Thus, we do not consider this protest ground to fall under the significant issue exception of our timeliness rules.

³ With regard to the additional protest ground concerning NAVSEA's evaluation of Oceaneering's use of the SSS in its oral presentation quiz response, the protester concedes that this weakness was communicated to it both at its February 22 debriefing and in the agency report, but alleges that its knowledge of this issue, first raised by the protester in its April 11 comments on the agency report, should be based on its receipt of an audible copy of its oral presentation on April 5 because "[d]uring the debriefing, Oceaneering's personnel had no specific recollection of the assumptions that they had communicated to the evaluators during the quiz response." Protester's Supplemental Comments (Apr. 30, 2001) at 7. We do not believe that the quality of a protester's memory as to what it said at the oral presentation should be a basis for tolling of the time period for filing protests. We also note that the protester does not deny the gist of the oral presentation on which this protest ground is based, but only disputes whether it should have been assessed a weakness for this aspect of the oral presentation. Thus, this protest basis was untimely raised.

criteria and applicable statutes and regulations. Modern Techs. Corp. et al., B-278695 et al., Mar. 4, 1998, 98-1 CPD ¶ 81 at 6. In our review of the agency's evaluation here, we have considered each of the protester's many timely raised allegations and, while we do not address each in detail, we find no basis to overturn NAVSEA's selection decision.

Oceaneering's first general area of protest is that, under the organizational past performance and experience factors, NAVSEA did not reasonably evaluate the comparative degree of relevance of the two offerors' contract histories to the RFP requirements.⁴

Where the solicitation so provides, the contracting agency's past performance evaluation should meaningfully consider the similarity of an offeror's contracts to that of the contract to be awarded. Beneco Enters., Inc., B-283512.3, July 10, 2000, 2000 CPD ¶ 176 at 7-8 n.4; Chem-Services of Indiana, Inc., B-253905, Oct. 28, 1993, 93-2 CPD ¶ 262 at 3-4. We think the agency did so here consistent with the terms of the RFP.

While recognizing that organizational past performance would only be evaluated based on relevant contracts, the RFP did not provide for a specific assessment of the degree of relevance of prior contracts to the RFP requirements under the past performance factor, but provided for the degree of relevance of contracts performed to be evaluated under the experience factor. The RFP stated:

Past performance is a measure of the degree to which an offeror satisfied its customers in the past and complied with Federal, state, and local laws and regulations. The Government will contact some of each offeror's customers to ask whether or not they believe: (1) that the offeror was capable, efficient, and effective; (2) that the offeror's performance conformed to the terms and conditions of its contract; (3) that the offeror was reasonable and cooperative during performance; (4) that the offeror was committed to customer satisfaction; and (5) if given a chance would they select the same or a different contractor team. . . . In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror will not be evaluated favorably or unfavorably on past performance.

RFP § M.2.5. With regard to the experience factor, the RFP stated:

⁴ The protester also generally alleged that this protest ground applied to the evaluation under the technical capability factor. However, it did not develop, produce support for, or otherwise allege any examples of, an improper evaluation under this factor concerning the degree of relevant experience of the offerors.

Experience is the opportunity to learn by doing. The Government will evaluate each offeror's organizational experience on the basis of its breadth, its depth, and its relevance to the work that will be required under the prospective contract, based on the information provided in the past performance/reference information sheets submitted in [the proposal]. The Government will also consider the organizational experience of the offeror's proposed subcontractors.

RFP § M.2.4, amend. 5 at 2. The agency has the discretion to structure the evaluation scheme in this manner, and we will not object to an agency's reasonable evaluation of past performance and experience under such a scheme. Sigmattech, Inc., B-271821, B-271821.2, Aug. 22, 1996, 96-2 CPD ¶ 101 at 9 n.14; see Contrack Int'l, Inc., B-270102, B-270102.2, Feb. 8, 1996, 96-1 CPD ¶ 53 at 3-5.

Here, both offerors have extensive recent experience in international search, recovery and rescue operations involving the skills, services and equipment called for under the RFP. Oceaneering does not assert that Phoenix's contract experience is not relevant to the RFP requirements. Nor does the protester allege that Phoenix's record of past performance, which was considered in NAVSEA's evaluation, does not reflect a similar level of quality of performance as Oceaneering's. Indeed, the contract references for both offerors reflected that both offerors performed at the highest levels. Therefore, the record supports the outstanding ratings for both offerors under the organizational past performance factor and the agency's determination that the two offerors were equivalent under this factor.⁵

As stated, the experience factor provided for the evaluation of each offeror's organizational experience on the basis of its breadth, its depth, and its relevance to the work required under the RFP. Phoenix's proposal included detailed information on contracts for the international deep sea search, recovery and/or inspection involving an aircraft, a missile, a ship and a submarine for military and commercial clients, and a proposed Phoenix subcontractor's contract for the design, manufacture and support of a submarine rescue system, as well as Phoenix's

⁵ Oceaneering alleges that NAVSEA improperly considered the personal experience of proposed personnel in evaluating Phoenix's proposal under the past performance factor, even though the RFP expressly precluded the consideration of the personal past performance of key personnel in evaluating organizational past performance. See RFP § M.2.5. Contrary to the protester's unsupported allegation, the record of evaluations under the organizational past performance factor shows that the agency did not violate this preclusion. Agency Report, Tab 7, Consensus Evaluator Worksheet, at 9-10, 18; Tab 13, Individual Evaluators' Worksheets.

SUPSALV contract for worldwide diving and diving-related services, which included delivery orders for recovery operations and support for a submarine rescue exercise. Phoenix Proposal, vol. III § 4.5.2, app. B, Past Performance Questionnaires. NAVSEA considered these contracts to be “very similar” to the operations to be performed under the solicited contract. Agency Report, Tab 8, SSET Recommendation of Award, at 2-3. Oceaneering’s proposal referenced operations performed as the incumbent, so its contract experience was on operations similar to or the same as that which would be required under the solicited contract. NAVSEA also considered that Oceaneering has been in business longer than Phoenix, although it found the difference in the extent of experience between the offerors was offset by the greater experience of Phoenix’s proposed key personnel. *Id.* at 3.

Oceaneering’s contention that Phoenix’s contracts are not as relevant as Oceaneering’s was based on the protester’s assessment that its experience is more complex than Phoenix’s considering such criteria as greater international significance of the operation or recovery of more debris items. However, the RFP did not identify these as relevant criteria and the protester provides no support, other than its own opinion, to establish these criteria as important discriminators for degree of relevance of the offerors’ experience. Under the circumstances, we find that NAVSEA’s judgment that the experience of these two offerors was essentially equal was reasonable. See Modern Techs. Corp. et al., *supra*, at 7 (where other offerors have experience on contracts similar to the RFP agency is not required to evaluate incumbency as an experience advantage); Cygnus Corp., B-275957, B-275957.2, Apr. 23, 1997, 97-1 CPD ¶ 202 at 8-9 (experience of proposed personnel can reasonably offset lack of corporate experience); Comtrack Int’l, Inc., *supra*, at 3-4 (agency can reasonably consider similar experience of an offeror as essentially equal to that of the incumbent contractor where the RFP does not explicitly require or prefer identical experience to the work solicited). The protester’s mere disagreement with the agency evaluation does not provide a basis for sustaining its protest. Magney Grande Distribution, Inc., B-286981, Mar. 22, 2001, 2001 CPD ¶ 56 at 5.

Citing Beneco Enters., Inc., *supra*, at 7-9 (determination that an offeror’s past performance based on the experience of a single proposed personnel’s work on job order contracts (JOC) was equal to the extensive and successful JOC past performance of the protester was unreasonable and inconsistent with the terms of the RFP), the protester also alleges that the agency unreasonably considered the experience of Phoenix’s key personnel equal to Oceaneering’s organizational experience as the incumbent.⁶ This argument is based upon an incorrect

⁶ To the extent the agency considered the experience of proposed personnel under the experience factor, we note that the RFP did not preclude such consideration under that factor and, absent such preclusion, we believe that the agency has the discretion to consider such information when evaluating a firm’s experience.

(continued...)

representation of the facts. As discussed above, contrary to the protester's allegation, the agency's evaluation did not equate the experience of Phoenix's proposed personnel, in and of itself, to the experience of Oceaneering as an organization, but appropriately gave significant weight to Phoenix's "very relevant" corporate experience.

Oceaneering next alleges that NAVSEA failed to apply the "50/50" rule for evaluating the degree to which each offeror's proposed team has worked together in the past. The RFP proposal preparation instructions for the past performance reference information sheet, which was to be used to evaluate organizational past performance and experience, states the following:

The degree to which the offeror's team has worked together in the past is also an important consideration of the offeror's ability to perform. Therefore, for each referenced contract, the contractor shall provide the approximate number of people dedicated at least 50% of the time during referenced contract period of performance, who will also be assigned to the proposed team for this effort at least 50% of the time.

RFP § L.4.4. The protester asserts that it had proposed more people meeting this standard than did Phoenix, and thus should have received a higher rating than Phoenix under the past performance and/or experience factors.

NAVSEA states that the RFP requested the information, but did not establish a "rule," or the mathematical formula proposed by the protester, for evaluating the degree to which proposed personnel had worked together previously. NAVSEA found that the information submitted showed that both offerors proposed personnel who had worked together under prior contracts and that this was not a distinguishing factor between the offerors.

It is apparent that the requested information concerning the "approximate number" of people assigned to this contract who have previously worked together was solicited to evaluate the offerors' experience, even though this was not one of the

(...continued)

See Cygnus Corp., *supra* (agency may properly consider experience of proposed personnel in evaluating the organizational experience of the offeror, even where the solicitation defines the factor in terms of corporate experience). The protester does not assert that key personnel experience cannot be considered under the experience factor, but only that key personnel experience should not have the same weight as corporate experience under this factor.

elements mentioned in describing the experience evaluation factor.⁷ Given that the RFP did not request the specific identification of individuals who have worked together, we agree with the agency that a mathematical comparison of the relative numbers of proposed personnel who have worked together previously was not envisioned by the RFP. Moreover, based on our review of the proposals, both of which described significant instances of proposed personnel having worked together previously, we think the agency could have reasonably concluded that this was not a distinguishing factor between the offerors' relative experience.

The protester next alleges that the RFP required the agency to contact other sources of past performance information than the references provided by the offerors, and that NAVSEA failed to do this. The pertinent RFP provision states:

In evaluating past performance the Government will contact some of the references provided by the offeror and other sources of information, including, but not limited to: Federal, state, and local government agencies, better business bureaus, published media, and electronic data bases. The Government may consider past performance information obtained from sources other than those identified by the offeror.

RFP § M.2.5. The protester contends that the language "will contact" applies directly to the phrase "other sources of information." Oceaneering claims that if the agency had looked at other sources of information as required, it would have readily discovered that the Discovery Channel was dissatisfied with Phoenix's performance on the USS Indianapolis contract, which should have adversely affected Phoenix's organizational past performance evaluation.

The agency denies that it was obligated to contact other sources of information, although it did so, and posits that from its review of the documentation of record concerning the performance of the USS Indianapolis contract, it does not believe the Discovery Channel was dissatisfied with Phoenix's contract performance.

The protester's argument does not consider the word "some" in the first sentence of this provision. There is no punctuation in the sentence to suggest that the phrase "will contact some" does not apply in total to all sources identified after it. Thus, the RFP provides that the agency will contact some, but not necessarily all, of the sources listed in the sentence. This reading is consistent with the use of the permissive "may consider" other information stated in the very next sentence in the provision. This reading is also consistent with the agency's answer to an offeror

⁷ This information could not relate to the past performance factor, which, as indicated, did not evaluate the relative relevance of contracts or consider key personnel's experience.

question concerning this section of the RFP, stating the RFP provides that information “may be obtained ‘from other sources of information.’” RFP amend 5, attach. 1, NAVSEA’s Answers to Offerors’ Questions. It is also consistent with the discretion that rests with agencies in determining the number of sources to contact for evaluating past performance. See Braswell Servs. Group, Inc., B-278921.2, June 17, 1998, 98-2 CPD ¶ 10 at 6 (no legal requirement for agency to consider past performance references). Here, the agency contacted the contract references identified in the proposals and evaluated past performance based on the information it obtained; this is consistent with the stated evaluation scheme and the agency’s discretion.⁸

The protester also alleges that it was improper under the stated evaluation rating scheme for the agency to consider Phoenix’s oral presentation as better than Oceaneering’s when both received the same adjectival rating of outstanding. We disagree.

There is nothing improper with the agency identifying strengths and weaknesses under an adjectival rating scheme, as the agency did here. Adjectival ratings and point scores are only a guide to assist agencies in evaluating proposals; information on advantages and disadvantages of proposals is the type of information that source selection officials should have in addition to ratings and point scores to enable them to determine whether and to what extent meaningful differences exist between proposals. Israel Aircraft Indus., Ltd., MATA Helicopters Div., B-274389 *et al.*, Dec. 6, 1996, 97-1 CPD ¶ 41 at 7. Proposals with the same adjectival rating are not necessarily of equal quality and the agency may properly consider specific advantages that make one proposal of higher quality than another. A & W Maintenance Servs., Inc.–Recon., B-255711.2, Jan. 17, 1995, 95-1 CPD ¶ 24 at 4.

In this case, NAVSEA determined that one of the meaningful differences in the offerors’ quiz responses was that Phoenix addressed alternative ports of mobilization for responding to the search and recovery problem presented by the quiz and Oceaneering did not. Oceaneering alleges that this constituted an unstated evaluation criterion that could not be used to distinguish quiz responses without disclosing in the RFP that this was an element of the evaluation. The RFP instructions for the oral presentation stated topics that offerors were to address in responding to the search and recovery technical problems, the first of which was mobilization of vessels, personnel, equipment and supplies.⁹ RFP § L.3.1. We think

⁸ The parties dispute whether the agency contacted sources other than those identified in Phoenix’s proposal. Given that the RFP did not require the agency to contact additional sources, the dispute is academic.

⁹ No criteria for evaluating the oral presentation subfactor were stated in section M of the RFP. The agency cited the instruction for presentation content at RFP § L.3.1 (continued...)

that discussing alternative ports of mobilization is intrinsic to the evaluation of the mobilization component of the oral presentation subfactor, and, as such, it is not an unstated evaluation criterion. See Sturm, Ruger & Co., Inc., B-250193, Jan. 14, 1993, 93-1 CPD 42 at 5-6 n.7 (evaluated element need not be stated in RFP where it is intrinsic to criteria that are stated in RFP); Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 6 (same). Although the protester contends there was no need for it to discuss alternative ports because it had selected the best port in response to the quiz problem, we think that, given the many uncertainties that the contractor will face in performing under the contract, NAVSEA reasonably evaluated as a weakness Oceaneering's failure to anticipate contingencies when identifying a mobilization port.¹⁰

The final protest ground concerns the RFP request for cost data for subcontractors. Oceaneering states that the purpose of requesting this information was to enable the agency to perform a cost realism assessment on the unscheduled costs (i.e., part of the cost reimbursable portion of the contract) for each offeror. The agency did not obtain cost data for Phoenix's subcontractors, and thus Oceaneering alleges that NAVSEA could not perform a cost realism analysis of Phoenix's unscheduled subcontracting costs as required. The agency responds that the RFP did not contemplate a cost realism analysis of unscheduled subcontracting costs, and the RFP was so structured because such costs applicable to a given proposal under this RFP could not be predicted in advance of an operation and any attempt to do so would not provide a realistic comparison of offerors' proposed costs.

The RFP stated the following under the evaluated cost factor:

The evaluation will be based on an analysis of the reasonableness, realism and completeness of the cost data. Pertinent cost information, . . . as necessary and appropriate, will be used to arrive at the Government determination of the realism of the offeror's Schedule C Pricing Formats. If proposed costs are considered to be unrealistic, including unrealistic indirect rates, the offeror's proposed costs will be adjusted upward or downward to reflect more realistic costs.

(...continued)

as the criteria for evaluating this subfactor. Agency Report at 36-38. The protester does not disagree.

¹⁰ Whether or not the protester's optimism that contingencies are unlikely is justified, by not discussing this contingency issue during its oral presentation, the protester missed this opportunity to demonstrate for evaluation purposes a facet of its technical capabilities.

RFP § M.2.6. As noted, the five schedule C pricing scenarios stipulated the labor positions and corresponding hours to be used; offerors were to apply their proposed labor rates and other costs to complete the pricing scenarios. For the unscheduled subcontracting cost items, the agency stipulated the same subcontracting costs for all offerors. The only costs an offeror was to propose in relation to these stipulated costs were its own burden rates on these subcontracted costs. RFP § M.5.2.a requires that supporting cost data be provided for the offeror's burden rates and RFP § M.5.2.b requires this same burden rate information be provided for subcontractors "as appropriate." Neither offeror provided the subcontractor supporting cost data. Given that the RFP stipulated the amounts for unscheduled subcontracting costs and did not provide a mechanism for assessing the cost realism of such costs, and that the protester and awardee similarly responded to the RFP and were treated identically with respect to not providing supporting subcontractor cost data, the agency's failure to obtain or assess this data provides no basis to sustain this protest ground.¹¹

The protest is denied.

Anthony H. Gamboa
General Counsel

¹¹ The protester contends that Phoenix has made more extensive use of subcontractors in its proposal than did Oceaneering in that some of Phoenix's proposed key personnel are actually subcontractor employees, so there was a duty for the agency to insist on obtaining supporting subcontractor cost data from Phoenix, but not Oceaneering. However, as pointed out by the agency, all key personnel are to be provided at the scheduled fixed rates, so we see no need to obtain cost data for subcontractors.